

Senate Study Bill 1269

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CO=CHAIRPERSON KREIMAN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the appointment of counsel in termination of
2 parental rights proceedings.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 2681SC 81
5 rh/pj/5

PAG LIN

1 1 Section 1. Section 600A.2, Code 2005, is amended by adding
1 2 the following new subsection:
1 3 NEW SUBSECTION. 10A. "Indigent" means a person has an
1 4 income level at or below one hundred percent of the United
1 5 States poverty level as defined by the most recently revised
1 6 poverty income guidelines published by the United States
1 7 department of health and human services, unless the court
1 8 determines that the person is able to pay for the cost of an
1 9 attorney in the pending case. In making the determination of
1 10 a person's ability to pay for the cost of an attorney, the
1 11 court shall consider the person's income and the availability
1 12 of any assets subject to execution, including but not limited
1 13 to cash, stocks, bonds, and any other property which may be
1 14 applied to the satisfaction of judgments, and the nature and
1 15 complexity of the case.
1 16 Sec. 2. Section 600A.6, subsection 3, Code 2005, is
1 17 amended by adding the following new paragraph:
1 18 NEW PARAGRAPH. c. A statement that the person against
1 19 whom a proceeding for termination of parental rights is
1 20 brought shall have the right to counsel pursuant to section
1 21 600A.6A.
1 22 Sec. 3. NEW SECTION. 600A.6A RIGHT TO AND APPOINTMENT OF
1 23 COUNSEL.
1 24 1. Upon the filing of a petition for termination of
1 25 parental rights under this chapter, the parent identified in
1 26 the petition shall have the right to counsel in connection
1 27 with all subsequent hearings and proceedings.
1 28 2. If the parent against whom the petition is filed
1 29 desires but is financially unable to employ counsel, the
1 30 court, following an in-court colloquy, shall appoint counsel
1 31 for the person if all of the following criteria are met:
1 32 a. The person requests appointment of counsel.
1 33 b. The person is indigent.
1 34 c. The court determines both of the following:
1 35 (1) The person, because of lack of skill or education,
2 1 would have difficulty in presenting the person's version of
2 2 the facts in dispute, particularly where the presentation of
2 3 the facts requires the examination or cross-examination of
2 4 witnesses or the presentation of complex documentary evidence.
2 5 (2) The person has defense to the termination of parental
2 6 rights that is not frivolous.
2 7 Sec. 4. NEW SECTION. 600A.6B PAYMENT OF ATTORNEY FEES.
2 8 1. A person filing a petition for termination of parental
2 9 rights under this chapter or the person on whose behalf the
2 10 petition is filed shall be responsible for the payment of
2 11 reasonable attorney fees for counsel appointed pursuant to
2 12 section 600A.6A unless the court determines that the person
2 13 filing the petition or the person on whose behalf the petition
2 14 is filed is indigent.
2 15 2. If the person filing the petition or the person on
2 16 whose behalf the petition is filed is indigent, the appointed

2 17 attorney shall be paid reasonable attorney fees by the county
2 18 as determined by the court pursuant to section 602.1302.
2 19 Sec. 5. Section 602.1302, subsection 4, Code 2005, is
2 20 amended to read as follows:
2 21 4. The judicial branch shall reimburse counties for ~~the~~
2 22 ~~costs of witness and mileage fees and for~~ attorney fees paid
2 23 pursuant to section ~~232.141, subsection 1~~ 600A.6B.

2 24 EXPLANATION

2 25 This bill relates to the appointment of counsel in
2 26 termination of parental rights proceedings.

2 27 The bill provides that the court shall appoint counsel for
2 28 indigent persons in termination of parental rights proceedings
2 29 brought pursuant to Code chapter 600A. The bill defines
2 30 "indigent" as a person with an income level at or below 100
2 31 percent of the United States poverty level as defined by the
2 32 most recently revised poverty income guidelines published by
2 33 the United States department of health and human services,
2 34 unless the court determines that the person is able to pay for
2 35 the cost of an attorney in the pending case. In making the
3 1 determination of a person's ability to pay for the cost of an
3 2 attorney, the court shall consider the person's income and the
3 3 availability of any assets subject to execution.

3 4 The bill provides that upon the filing of a petition for
3 5 termination of parental rights, the parent identified in the
3 6 petition shall have the right to counsel in connection with
3 7 all subsequent hearings and proceedings and if the parent
3 8 against whom the petition is filed desires but is financially
3 9 unable to employ counsel, the court, following an in-court
3 10 colloquy, shall appoint counsel for the person if certain
3 11 criteria are met.

3 12 The bill provides that a person filing a petition for
3 13 termination of parental rights or the person on whose behalf
3 14 the petition is filed shall be responsible for the payment of
3 15 reasonable attorney fees for counsel appointed pursuant to
3 16 Code section 600A.6A unless the court determines that the
3 17 person filing the petition or the person on whose behalf the
3 18 petition is filed is indigent, and in such case the attorney
3 19 fees shall be paid from funds established by a county's base
3 20 formula pursuant to Code section 232.141.

3 21 LSB 2681SC 81

3 22 rh:nh/pj/5